

## REMARKS

### **Status of the claims**

Claims 1, 2, 4, 5, 7, 8, 10, 11, 13-15, 21-26, 31, 34, 35 and 38-48 were pending and claims 1, 2, 4, 5, 7, 8, 10, 11, 13-15, 21-26, 31, 35 and 38-47 had been withdrawn from consideration. Accordingly, claims 34 and 48 were under appeal.

By virtue of this paper, claim 34 and withdrawn claim 1 have been amended to make explicit that, in the claimed complex, the ligand binds to the first and second polypeptides and mediates heterodimerization of the two DNA binding polypeptides, as described throughout the specification as filed, for example, at page 49, line 25; page 58, lines 12-14; page 59, lines 4-5; and paragraph bridging pages 54 to 55. Claim 48 has been similarly amended.

Accordingly, claims 1, 2, 4, 5, 7, 8, 10, 11, 13-15, 21-26, 31, 34, 35 and 38-48 are pending as shown above and claims 34 and 48 are under active consideration.

Applicants again note that rejoinder of the method claims containing all the limitations of product claims 34 and 48 is in order upon indication of allowable subject matter.

### **35 U.S.C. § 102**

Claims 34 as previously pending remained rejected under 35 U.S.C. § 102(b) as allegedly anticipated by WO 95/19431 (hereinafter “Barbas”). (Examiner’s Answer, pages 4 and 9-13).

The rejection of previous claims 34 was maintained in the Examiner’s Answer on the grounds that the term “ligand” encompasses a zinc ion and therefore the claim encompasses Barbas’s zinc coordinating Zif(C7)6-Jun and Zif268-Fos proteins. *Id.*

Although Applicants submit, for the reasons set forth in the Appeal Brief, that the term “ligand” should not be interpreted to include a zinc ion in the context of claim 34 as a whole, the claim has been amended above to make explicit that the ligand mediates heterodimerization of the first and second polypeptides. As acknowledged,

heterodimerization of Barbas's Zif(C7)6-Jun and Zif268-Fos proteins is not mediated via a ligand, as claimed.

Thus, Barbas does not in any way describe or demonstrate complexes as set forth in claim 34 and, accordingly, withdrawal of the rejection is in order.

### **35 U.S.C. § 103**

The rejection of claim 48 under 35 U.S.C. § 103(a) as allegedly obvious over WO 93/23431 (hereinafter "Vegeto"), as evidenced by McEwan *et al.* and Bledsoe *et al.* in light of Liu *et al* (1997) *Proc. Nat'l. Acad. Sci. USA* 94:5525-5530 (hereinafter "Liu") was also maintained. (Examiner's Answer, pages 14-27). Again, it was alleged that the claim read on homodimers and that homodimers are disclosed in Vegeto. (Examiner's Answer, pages 15-16). In addition, it was again alleged that the claim did not recite that the ligand mediated dimerization. (Examiner's Answer, page 19).

Applicants strongly disagree with the Examiner's interpretation of the claims and of the relevance of the Board's Decision in Appeal No. 2006-1270 (cited in the Appeal Brief and discussed on page 15-16 of the Examiner's Answer). In particular, there is no question that the Board considers the modifiers "first" and "second" to refer to proteins that are different from each other in structure. The assertion by the Examiner that "there is no question that a homodimer comprises two distinct polypeptides (i.e. they are comprised of different atoms and occupy different space at any given time)" flies in the face of both common sense and the Board's clear decision that "first" and "second" refer to polypeptides that are different in sequence.

Furthermore, Applicants traverse the Examiner's assertion on page 14 of the Examiner's Answer that they somehow acknowledged that Vegeto and Liu would render claimed directed to homodimers obvious. Applicants admitted nothing of the kind – the arguments in the Appeal Brief pointed out that the rejection was improper because the claim's recitation of "first" and "second" polypeptides indicated that the polypeptides were different (*i.e.*, formed to heterodimers when bound to each other) and that the claims required that the ligand mediate interaction of the first and second polypeptides,

which is clearly not disclosed or suggested in either Vegeto or Liu. No admissions regarding homodimers were made because homodimers were and are not relevant to the claims. Applicants made no admissions regarding homodimers, they simply addressed why the references failed to disclose or suggest all the elements of the claims.

In any event, solely to expedite prosecution, claim 48 has been amended as shown above to make it explicit that the first and second polypeptides are different in that they form a heterodimer and, furthermore, that the ligand binds to both the first and second polypeptides and mediates heterodimer formation. Accordingly, there is no combination of Liu and Vegeto that renders claim 48 obvious and Applicants respectfully submit that withdrawal of this rejection is in order.

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## CONCLUSION

In light of the amendments and remarks presented in this Submission, it is believed that the elected species are in condition for allowance. Applicants thus respectfully request consideration of the remaining species and of generic claim 42.

Please direct all communications to the undersigned, using the contact information provided below.

Respectfully submitted,

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By: D. Pasternak

Dahna S. Pasternak  
Registration No. 41,411

ROBINS & PASTERNAK LLP  
1731 Embarcadero Road  
Suite 230  
Palo Alto, CA 94303  
Telephone: (650) 493-3400  
Facsimile: (650) 493-3440